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**Introduced by Senator Yee**  
(Coauthor: Assembly Member Portantino)

February 23, 2009

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An act to amend Section 8547.10 of the Government Code, relating to improper governmental activities.

LEGISLATIVE COUNSEL'S DIGEST

SB 219, as introduced, Yee. Disclosure of improper governmental activities: University of California: damages.

Existing law, the California Whistleblower Protection Act, authorizes a University of California employee or applicant for employment to recover damages caused by intentional acts of reprisal, retaliation, threats, or coercion only if the university failed to reach a decision regarding a complaint filed with a specified university officer by the injured party within the time limits established for that purpose by the Regents of the University of California.

This bill would also authorize recovery for damages if the university reached a decision regarding the complaint within those time limits.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 8547.10 of the Government Code is
- 2 amended to read:
- 3 8547.10. (a) A University of California employee, including
- 4 an officer or faculty member, or applicant for employment may
- 5 file a written complaint with his or her supervisor or manager, or
- 6 with any other university officer designated for that purpose by

1 the regents, alleging actual or attempted acts of reprisal, retaliation,  
2 threats, coercion, or similar improper acts for having made a  
3 protected disclosure, together with a sworn statement that the  
4 contents of the written complaint are true, or are believed by the  
5 affiant to be true, under penalty of perjury. The complaint shall be  
6 filed within 12 months of the most recent act of reprisal complained  
7 about.

8 (b) Any person who intentionally engages in acts of reprisal,  
9 retaliation, threats, coercion, or similar acts against a University  
10 of California employee, including an officer or faculty member,  
11 or applicant for employment for having made a protected  
12 disclosure, is subject to a fine not to exceed ten thousand dollars  
13 (\$10,000) and imprisonment in the county jail for up to a period  
14 of one year. Any university employee, including an officer or  
15 faculty member, who intentionally engages in that conduct shall  
16 also be subject to discipline by the university.

17 (c) In addition to all other penalties provided by law, any person  
18 who intentionally engages in acts of reprisal, retaliation, threats,  
19 coercion, or similar acts against a university employee, including  
20 an officer or faculty member, or applicant for employment for  
21 having made a protected disclosure shall be liable in an action for  
22 damages brought against him or her by the injured party. Punitive  
23 damages may be awarded by the court where the acts of the  
24 offending party are proven to be malicious. Where liability has  
25 been established, the injured party shall also be entitled to  
26 reasonable attorney's fees as provided by law. However, any action  
27 for damages shall not be available to the injured party unless the  
28 injured party has first filed a complaint with the university officer  
29 identified pursuant to subdivision (a), and the university has  
30 *reached, or failed to reach,* a decision regarding that complaint  
31 within the time limits established for that purpose by the regents.

32 (d) This section is not intended to prevent a manager or  
33 supervisor from taking, directing others to take, recommending,  
34 or approving any personnel action or from taking or failing to take  
35 a personnel action with respect to any university employee,  
36 including an officer or faculty member, or applicant for  
37 employment if the manager or supervisor reasonably believes any  
38 action or inaction is justified on the basis of evidence separate and  
39 apart from the fact that the person has made a protected disclosure.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or state law or under any employment contract or collective bargaining agreement.

CORRECTIONS:

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